17H (2)

No 09-1464

IN THE
SUPREME COURT OF THE UNITED STATES

SUZANNE VENEZIA,
PETITIONER
V.

WILLIAM PENN SCHOOL DISTRICT,
RESPONDENT.

ON PETITION FOR REHEARING
TO THE SUPREME COURT OF THE UNITED
STATES

PETITION FOR REHEARING

Suzanne Venezia, Pro Se Petitioner
318 West Walnut Street
North Wales, Pennsylvania 19454
(215) 390-3126
S.VENEZIA@VERIZON.NET

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PARTIES TO THE PROCEEDING

The parties to this Action are set forth in this caption.

TABLE OF CONTENTS

PARTIES TO THE PROCEEDINGS	i
TABLE OF CONTENTS	ii
PETITION FOR REHEARING	1
ELEMENTS FOR REHEARING	3
1. Considerations of the Third Circuit	3
2. Considerations of the Ninth Circuit	5
3. Considerations of the Supreme Court	8
CONCLUSION	10
CERTIFICATE OF PRO SE PETITIONER	12
Authorities	
Bowles v. Russell, 551 U.S. 205 (2007)	3,4,5,8,9
Lorna C. Claycomb v. Playtex, 3936 F.3d. (3d Cir.2007)	1,3,4
Poole v. Family Court of New Castle County, 368 F.3d 263, 267-68 (3d Cir.2004)	3,4,
Reed Elsevier, Inc., Et Al. V. Muchnick, Irvin, Et Al., 103 S.C. (2008)	6,8,9
United States v. Michel Withers, 6221 (9th Cir.2010)	6
Federal Statutes and Court Rules	
28 U.S.C. §2107(c)	2
28 U.S.C. §1254(1)	1
Federal Rules of Appellate Procedure	2,3,5,7,9,10
Rule 44.2 - Rules of the Supreme Court of the United States	12

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PETTTION FOR REHEARING

Petitioner/Plaintiff respectfully requests rehearing of this Court's Order dated 10/04/2010, denying the Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

The Petitioner bases her request on the following elements which were not previously identified in the Petitioner's Petition for Writ of Certiorari filed in this Court on 05/29/2010, but which support those same elements and the questions identified therein:

- Considerations of the Third Circuit - the same court which dismissed the Petitioner's appeal;
- Considerations of this Court;
- Considerations of the Ninth Circuit.

In addition to the elements contained herein, the Petitioner's original pertinent questions remain:

Does a court of appeals lack the authority to consider an appeal filed within the time limits prescribed by the Federal Rules of Appellate Procedure and Congressional statute, 28 U.S.C. §2107(c), in the absence of a separate motion for an extension of time when a notice of appeal has been timely filed?

Does a court of appeals lack the authority to request a ruling from a lower court on the merits of the timeliness of an appeal, in the absence of a separate motion for an extension of time?

Does a court of appeals have the authority to dismiss an appeal for untimeliness when a timely filed notice of appeal is entered on the docket after the expiration of the time limit on which the Court then relies to subsequently dismiss the appeal, whereby depriving the Appellant, a priori, of any course of action?

Can a court of appeals disregard its own local rules of appellate procedure and written court instructions, and arbitrarily docket, issue, fail to issue or fail to timely issue notices to appellants which regard the initial docketing of an appeal and/or the dismissal of an appeal for lack of jurisdiction?

ELEMENTS FOR REHEARING

1. Considerations of the Third Circuit (the same court which dismissed the Petitioner's appeal) in *Lorna C. Claycomb v. Playtex*, 3936 F.3d, (3d Cir.2007).

The Third Circuit Court dismissed the Petitioner's appeal for lack of jurisdiction, citing *Bowles v. Russell*, 551 U.S. 205 (2007) and *Poole v. Family Court of New Castle County*, 368 F.3d 263, 267-68 (3d Cir.2004).

From the start of 2007, however, the only circuit court to still cite *Poole*[1] was the Third Circuit Court, and it did so only in three cases.

Like its sister courts, by the end of 2007, the Third Circuit Court began to reconsider its own position and in its decision in *Lorna C. Claycomb v. Playtex*[2], dated 12/21/2007, it remanded the case to district court for an extension of time pursuant FRAP 4(a)(6).[3] Why did the Third Circuit Court not follow this same course of action in the Petitioner's case?

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[1] *Poole v. Family Court of New Castle County*, 368 F.3d 263, 267-68 (3d Cir.2004)

[2] *Lorna C. Claycomb v. Playtex*, 3936 F.3d (3d Cir.2007)

[3] Federal Rules of Appellate Procedure

Moreover, unlike *Claycomb*[4], the Petitioner's filings concorded with the "jurisdictional time requirements" for an extension of the time to reopen an appeal. ***Why then did the Third Circuit Court waive the "separate motion" element in Claycomb, when it labeled this same element as a "jurisdictional" requirement in the instant case?***

Given the above, and therefore, contrary to its Order of Dismissal, the Third Circuit Court had plenury jurisdiction to remand the Petitioner's filing to district court for ruling, and was not - as it affirmed - deprived of jurisdiction by this Court's ruling in *Bowles*[5].

Until 2007, the Third Circuit Court had held its decision in *Poole*[6] as an important "landmark" decision, and even this Court denied Poole a writ of certiorari[7]. Over time, however, reference to *Poole*[8] justly disappeared from all circuit court citations, and the case became a ruling more at "landfill" than "landmark".

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[4] *Lorna C. Claycomb v. Playtex*, 3936 F.3d (3d Cir.2007)
[5] *Bowles v. Russell*, 551 U.S. 205 (2007)
[6] *Poole v. Family Court of New Castle County*, 368 F.3d 263, 267-68 (3d Cir.2004)
[7] *Poole v. Family Court of New Castle County*, U.S. 318 (2004)
[8] *Poole v. Family Court of New Castle County*, 368 F.3d 263, 267-68 (3d Cir.2004)

2. Considerations of the Ninth Circuit

In its attempt to wrongly divest itself of jurisdiction in the instant case, the Third Circuit Court also cited *Bowles*[9] and applied the "jursidictional" requirements of time in FRAP 4 to the filing of motions in FRAP 4. In no manner does this Court's ruling in *Bowles*[10], *however,* make this same application. *In order for Bowles*[11] *to represent the current "standard of review" for all elements of FRAP 4 (as affirmed by the Third Circuit), there cannot be decisions from other circuit courts which afford a larger interpretation to the filing of motions under FRAP 4.*

These decisions, however, do indeed exist, and therefore *Bowles*[12] does not meet the standard for all FRAP 4 conditions. In fact, in addition to the cases already cited by the Petitioner in her Petition to this Court filed on 05/29/2010, the following decision was issued just recently in August 2010:

[9] *Bowles v. Russell*, 551 U.S. 205 (2007)
[10] Id.
[11] Id.
[12] Id.

– *United States v. Michel Withers*, 6221 (9th Cir.2010). ***In this case the court wrote:***

> ***We also ordered a limited remand to the district court to determine whether Withers's notice of appeal was timely. We stayed consideration of the appeal until the district court's resolution of the timeliness.***[13]

When the district court then decided that Withers's appeal was untimely, on appeal again to the Ninth Circuit, the Ninth Circuit ruled in Withers's favor and concluded :

> Withers's notice of appeal should have been construed as both a notice of appeal and a motion to reopen the time for filing an appeal. [14]

Since an appeal is a "last resort" request, this Court must reaffirm its "desire to curtail such "drive-by jurisdictional rulings... which too easily can miss the critical differences between true jurisdictional conditions and nonjurisdictional limitations".[15]

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[13] *United States v. Michel Withers*, 6221 (9th Cir.2010).
[14] *Id*
[15] *Reed Elsevier, Inc., Et Al V. Muchnick, Irvin, Et Al*, 103 S.C. (2008)

In addition to missing these important differences, the broad power assumed by the Third Circuit in divesting itself of jurisdiction, casts doubt on the integrity of the entire appeals process. Was the Petitioner's appeal dismissed and not remanded to District Court in an attempt to close the final door on an appeal without having any court review the merits of the original dismissal of a wrongful termination complaint filed against the United States? This Court cannot allow the proliferation of these doubts - any allusion to this type of jockeying between the courts of appeals and the district courts must be checked.

In fact, the authority of the circuits courts to remand timeliness questions to district courts, is, in of itself, an indispensable tool for "checking" the integrity of both courts. When this FRAP 4 "integrity check" is discarded - under the pretense of "lack of jurisdiction" - the appeals process loses credibility.

3 Considerations of the Supreme Court

Reed Elsevier, Inc., Et Al. v. Muchnick[16]

This Court's decision dated 03/02/2010 in *Reed Elsevier*[17] reaffirms its considerations in *Bowles* and more clearly defines the basis for this Court's ruling in that case. These clarifications demonstrate this Court's desire to identify the importance of context and, at the same time, explain that it relied on "interpretations of similar provisions in many years past"[18] and on the "historical treatment"[19] for taking an appeal regarding conditions deemed jurisdictional in statutes which predate the "creation of the court of appeals."[20]

This Court's further analysis of *Bowles* in *Reed Elsevier*[21] provides additional proof that the Third Circuit Court erroneously applied Bowles in the instant case; in *Reed Elsevier*[22], this Court again clarifies that "when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in

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[16] *Reed Elsevier, Inc., Et Al V. Muchnick, Irvin, Et Al*, 103 S.C. (2008)
[17] Id.
[18] Id.
[19] Id
[20] Id
[21] *Reed Elsevier, Inc., Et Al V. Muchnick, Irvin, Et Al*, 103 S.C. (2008)
[22] Id

character."[23] When describing the "jurisdictional" character of *Bowles*[24] however, this Court repeatedly uses the phrase "time limits"[25]; never once has this Court applied any "jurisdictional" label to the "motions" in FRAP 4. The above qualifications about *Bowles*[26] in *Reed Elsevier*[27] are perhaps also prescient of future further clarity and alignment between statute and the provisions of FRAP 4.

[23] *Id.*
[24] *Bowles v. Russell, 551 U.S. 205 (2007)*
[25] *Id*
[26] *Bowles v. Russell, 551 U.S. 205 (2007)*
[27] *Reed Elsevier, Inc., Et Al V. Muchnick, Irvin, Et Al*, 103 S.C. (2008)

CONCLUSION

The Petitioner, a pro se litigant, "stumbled" many times in bringing her just case to court; her "falls" however, never caused irrevocable damage (in terms of legal procedure) for the advancement of her case through the courts. The explanations she provided to this Court, to the Third Circuit Court and to the District Court were detailed and concise[28] and based on precedent – they were not "constructed" explanations to "fit" provisions found in the law – they were truths which fortuitously found applications in the law which well-vested her specific circumstances.

This Court should grant this Petition for Rehearing since the FACTS demonstrate that the Petitioner:

- Filed a timely appeal within the provisions of FRAP 4(a)(6);
- Her motivations for not filing within the 30-day appeal period were never questioned or remanded to the District Court for ruling;
- The documentation she provided to the Third Circuit Court clearly and concisely identified the details of her tardy apprisal of the District Court's Order;
- The District Court was never asked to rule on the timeliness of the Petitioner's appeal.
- The District Court, upon the docketing of the Petitioner's Notice of Appeal, did not request

[28] high-lighting the many errors committed by the courts themselves

any clarification from the Petitioner or send any documentation to the Third Circuit Court regarding timeliness;

The Third Circuit Court was well within its jurisdiction to remand the appeal to the District Court for ruling;

- In dismissing the instant case for "lack of jurisdiction", the Third Circuit Court permitted the Order of Denial issued by the District Court on 08/19/2009 to stand without any possibility of appeal. It did so regardless of the fact that it possessed documentation attesting to the fact that the Plaintiff had received tardy apprisal of of the Order from District Court.

Based on the foregoing, this Court should grant this Petition, for Rehearing, vacate its Order denying certiorari, vacate the Third Circuit Court's Order of dismissal and remand for consideration of the elements identified herein.

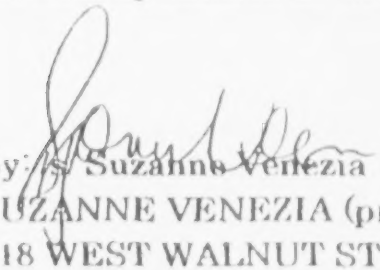
Respectfully submitted,

By: /s/ Suzanne Venezia 10/27/2010

SUZANNE VENEZIA (pro se)
318 WEST WALNUT STREET
NORTH WALES, PENNSYLVANIA 19454
(215) 390-3126 S.VENEZIA@VERIZON.NET

CERTIFICATE OF PRO SE PETITIONER

As pro se Petitoner in this case, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specifiied in Rule 44.2 of this Court.



By: /s/ Suzanne Venezia 10/27/2010
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